

ORIGINAL

FORMAL COMPLAINT

ARIZONA CORPORATION COMMISSION
FORMAL COMPLAINT FORM



0000148230

COMPLAINT	Richard Gayer	COMPLAINT NUMBER	111241	DATE	24 Sep 2013
ADDRESS	526 West Wilshire Drive, Phoenix, AZ 85003			PHONE (HOME)	602-229-8954
NAME OF RESPONSIBLE PARTY				PHONE (WORK)	
NAME OF UTILITY	Southwest Gas Corporation	ACCOUNT NUMBER	421-0680400-022		
GROUNDS FOR COMPLAINT: (COMPLETE STATEMENT OF THE GROUNDS FOR COMPLAINT. INDICATING DATE(S) OF COMMISSION/OMISSION OR ACTS OR THINGS COMPLAINED OF.) (USE ADDITIONAL PAGE IF NECESSARY.)					
A complete statement of the Grounds for Complaint is attached.			G-01551A-13-0327		
<div style="text-align: center;">Arizona Corporation Commission DOCKETED SEP 24 2013</div> <div style="border: 1px solid black; padding: 5px; display: inline-block;">DOCKETED BY NR</div>					
NATURE OF RELIEF SOUGHT: (USE ADDITIONAL PAGE IF NECESSARY.)					
A complete statement of the Nature of Relief Sought is attached.			<div style="text-align: right;">RECEIVED 2013 SEP 24 AM 11 ARIZONA CORPORATION COMMISSION DOCKET CONTROL</div>		
SIGNATURE OF COMPLAINANT OR ATTORNEY			RICHARD GAYER		
<i>Richard Gayer</i>					

Arizona Corporation Commission – Richard Gayer v. Southwest Gas

Complete Statement of the Grounds for the Complaint – No. 2013-111241

Complainant alleges as follows:

1. Southwest Gas Corporation (“SWG”) is a public service fixed gas utility corporation subject to regulation by the Arizona Corporation Commission under Article 15 of the Arizona Constitution and under Title 40 of the Arizona Revised Statutes.

2. Complainant Richard Gayer is an involuntary customer of SWG and is one of countless victims of SWG’s silent imposition of a new Monthly Weather Adjustment Charge. He has filed an Informal Complaint and has completed Mediation on August 27, 2013, all without success.

3. SWG is imposing a Monthly Weather Adjustment Charge (“Charge”) and other components of a “decoupling” charge upon its customers without notice to them. This new charge represents a rate increase for SWG (Order No. 72723 in Docket No. G-01551A-10-0458 dated January 6, 2012 at ¶ 108 (“Order”).

4. SWG’s intentional failure to itemize fully all bills on its own initiative constitutes a deceptive practice that violates Arizona Revised Statutes § 44-1521 et seq. as a form of consumer fraud. Arizona Public Service Corporation, a fixed electrical utility, itemizes 17 lines, including its new “Lost Fixed Cost Recovery Adjustor” that serves a purpose similar to that of the Charge.

5. SWG’s failure to show the Monthly Weather Adjustment Charge on all residential bills violates Rule 14-2-310(B)(2)(j) of the Arizona Administrative Code on minimum information requirements for such bills (“Adjustment factor, where applicable”).

6. SWG’s bills that itemize the Charge contain seven lines, whereas bills that do not so itemize contain four lines. Changes to the back of SWG’s bills reveal its intent to deceive its customers.

7. Southwest Gas Corporation is using methods of calculating the Charge that are not permitted by Arizona Revised Statutes nor by Tariffs, Orders, Rules or Regulations of the Arizona Corporation Commission. The foregoing misconduct began on January 1, 2012 and continues to date.

8. The foregoing unlawful methods include linear regressions, waiving the Charge when there are zero Heating Degree Days (“HDDs”), using proprietary non-public data for actual HDDs, using largely non-public data for average HDDs (10-year private instead of ten or 30-year public) and limiting the maximum Charge to the therms actually used.

9. These methods prevent Complainant and other customers of SWG from verifying the accuracy of their bills because SWG is concealing them from almost all of its customers and is using proprietary HDD data to calculate the Charge.

10. A computerized search and manual review of the Order revealed that not one of the foregoing methods is mentioned therein.

11. A computerized search and manual review of the “Prepared Testimony” in the foregoing case (“2010 Arizona General Rate Case” on SWG’s website) found mentions of regression but not in connection with the calculation of customers’ bills.

12. SWG uses the foregoing unlawful methods in part to keep its customers ignorant of the Charge by preventing an unusually large bill from alerting a customer to its existence. SWG has utterly failed to educate its customers about the Charge, despite its promises to do so (Order at ¶ 88; see also SWG's Quarterly Report #141981 dated January 31, 2013 at page 4 to the Arizona Corporation Commission regarding its so-called "efforts to educate customers" about the Charge.)

13. Global warming and other climate changes will ensure that as time moves forward the Charge will become an increasing addition to customers' bills, and SWG admits that there is a long-term warming trend in its service area (Order at ¶ 89).

14. SWG and Complainant are bound by all provisions of Arizona Gas Tariff Number 7, including the Energy Enabling Provision (EEP) on pages 92 through 96 dated January 1, 2012 and Rule 9(H)(1) on page 227 dated April 30, 2003.

15. Rule 9(H)(1) provides that "Each customer shall be billed under the applicable *tariff* indicated in the customer's application for service [emphasis added]".

16. The Monthly Component of the EEP shall be calculated by the Formula set forth on pages 92 and 93 of the Tariff ("Formula"), but SWG is violating that requirement by using one or more of the unlawful methods set forth in paragraph 8, above that vary from customer to customer and temporally.

17. By failing to calculate the Charge for all customers by the same method for all bills, SWG has committed unlawful discrimination in violation of the Arizona Constitution Article 15, section 12 and Arizona Revised Statutes section 40-334. The latter provides in part that "A. A public service corporation shall not, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage." SWG's failure to inform all of its customers of the Charge, including changes to and omissions from the back of bills (no mention of the Charge or "decoupling"), constitutes informational discrimination against almost all of them.

18. The Annual Component of the EEP provides on page 94 of the Tariff a schedule of monthly "margins" that SWG is authorized to collect, but SWG is failing and refusing to apply that schedule on a monthly basis with an annual "true-up" adjustment.

19. Complainant has made two offers in compromise to avoid this proceeding, but SWG has rejected both of them without making any counter-offer.

20. SWG expressly rejected Complainant's (first) offer to withdraw his Complaint with prejudice if SWG provides each customer with a fully itemized bill that includes the Charge. SWG contends that such itemization would amount to an "imposition" on their customers, but fails to explain how the increase from four to seven lines would amount to an imposition.

21. SWG expressly rejected Complainant's (second) offer to withdraw his Complaint with prejudice if in exchange for a reasonable clerical charge SWG provides him with an accurate name, street address and (where known) e-mail address list of all of its residential customers with Phoenix zip codes (850xx) so that Complainant can inform at least some of those customers of the Charge at his own personal expense of about \$10,000.

Case No. 2013-111241 – Nature of Relief Sought

Complainant respectfully requests the following relief from the Commission:

1. An Order directing SWG to follow the foregoing Tariff provisions by calculating the Monthly Weather Adjustment Charge (Charge) in strict accordance with the Formula on pages 92-93 and by applying every month the Annual Component shown by a monthly list on page 94 with an annual true-up.
2. An Order directing SWG to refrain from using any other method to calculate the Charge, including but not limited to regressions, limiting the Charge to the terms actually used by a customer, making the Charge zero when there are zero Heating Degree Days (HDDs), or any other method whether or not it is or may be viewed as a mitigator.
3. An Order directing SWG not to discriminate in favor of or against any of its customers by using different methods to calculate the bills of different customers or by providing, withholding or denying any billing information whatsoever to any customer with or without a request from the customer.
4. An Order directing SWG to itemize all customer bills to include as a line item the Monthly Weather Adjustment Charge subject to actual individual customer requests for a simplified bill.
5. An Order directing SWG to publish on its website the ten-year averages it uses for Normal HDDs in the Formula with a clear link to that data from the home page (www.swgas.com).
6. An Order directing SWG to use for Actual HDDs in the Formula data that are publicly available without charge from the National Weather Service/NOAA.